

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13793, of John A. Booker, Jr., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from delicatessen, first floor, to a restaurant and delicatessen seating approximately fifty persons, first floor, in an SP-2 District at the premises 1208 13th Street, N.W., (Square 245, Lot 825).

HEARING DATE: July 21, 1982
DECISION DATE: September 1, 1982

FINDINGS OF FACT:

1. The subject site is located on the west side of 13th Street between M and N Streets and is known as premises 1208 13th Street, N.W. It is in an SP-2 District.
2. The site is developed with a two story row structure, occupied on its first floor by the Logan Park Deli. The subject lot is 12.40 feet wide by 120 feet deep. The subject building is approximately sixty feet deep.
3. North of the site are a cleaners, variety store, liquor store, automobile tire shop, apartment building, Sutton Plaza (Howard University dormitory), and an office building, formerly a funeral home in the SP-2 District. East and northeast of the site are an apartment building, presently being renovated by the D.C. Government, super market, parking lot, apartment building with bar and lounge and the new Logan Park apartment building on the southeast corner of N and 13th Streets, all in the SP-2 District. South of the site there is a vacant lot and west of the site is SP-2 zoned property.
4. The Logan Park Deli is presently a retail carry-out shop. The shop has existed for the past twenty years at this address and serves non-alcoholic beverages, sandwiches, home-made pasteries and soups, cigarettes etc. from 6:00 A.M. to 7:00 P.M. five days a week. The present manager has managed the deli for one year. He has owned the business for six months. One full time and two part time persons are presently employed at the deli.

5. The manager proposes to supplement the present business with a restaurant seating approximately fifty persons and to change his hours to be open from 6:30 A.M. to 12:00 A.M. seven days a week. The number of employees will increase depending on the number of seats that are provided.

6. The present delicatessen is a non-conforming use operating under Certificate of Occupancy No. B-127594. The site is located in the SP-1 District which does not permit a delicatessen or restaurant. These uses are first permitted as a matter-of-right, or special exception, in the C-1 District.

7. The Zoning Regulations provide that, if approved by the BZA, a Class II non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted, within the authority and procedures established in Section 7109.

8. Section 7109 requires that, where a change of non-conforming use is proposed, the Board shall find that either the new use will be a neighborhood facility or, the type of use which although not a neighborhood facility, will not be objectionable. The Board shall also give consideration to the overall impact and its effect on the present character and future development of the neighborhood.

9. The applicant testified that his customers are basically from the surrounding neighborhood. It was these customers who encouraged him to provide restaurant service. The applicant proposes to service his existing neighborhood customers at hours that are convenient to them.

10. The proposed restaurant will feature no entertainment.

11. The present signs will be removed. Across the window there will be letters spelling out "Logan Park Cafe."

12. There is restrictive metered parking allowed on 13th Street. There is room in the rear of the property to park approximately six to eight automobiles in a stacked fashion. This area is presently used for employee parking. The applicant is not required to provide off-street parking under the Zoning Regulations, given the non-conforming parking credit and size of the deli/restaurant proposed.

13. The Office of Planning and Development, by report dated July 15, 1982, recommended that the application be approved. The OPD reported that it was of the opinion that the proposed deli/restaurant use will be a neighborhood serving facility, and that such will not be objectionable. The SP District is designed as a mixed residential/office zone. The neighborhood of the site, more specifically the 13th Street frontage between Logan Circle and Massachusetts Avenue, consists of a variety of uses including new condominium apartments, offices, and retail establishments. The OPD believed that the small deli/restaurant proposed will draw its primary patronage from these neighborhood residents and workers, as it is not a national chain type restaurant having extensive off-street parking or advertising to attract persons from beyond the neighborhood. Upon field inspection, the OPD found the exterior and interior appearance of the premises unobtrusive and its operation in terms of signage, fenestration and hours of operation in keeping with the neighborhood character. The Board concurs in the OPD recommendation.

14. The Logan Circle Community Association, by letter of July 21, 1982, recommended that the application be approved. In its testimony at the public hearing, the Association reported that it considers the proposed use as a community amenity for the employees of the surrounding office buildings and the residents who do not desire to go downtown or to the hotels for a sit-down establishment. The Association further testified that there was a dearth of such facilities in the neighborhood. The Association questioned however, whether the present site could accommodate fifty seats as proposed.

15. Advisory Neighborhood Commission 2C, by letter of July 12, 1982, reported that the ANC had received no opposition from citizens nor commissioners regarding the application.

16. There was no opposition to the application.

17. The Board, at the close of the public hearing, left the record open for further evidence to be submitted including a floor plan drawn to scale of the first floor interior reflecting the location of the seating area, equipment counter space, kitchen equipment and a list of employees. The applicant was also advised to address himself to the health and fire regulations affecting the proposed operation. The Board finds that as evidenced in Exhibit No. 19, the applicant submitted a plan of the restaurant's layout showing forty seats. The applicant further advised that the Department of Licenses and Inspection had no regulations governing seating capacity unless seventy-five or more seats were requested. This was true also of the Fire Inspector's Office. The Health Inspector's Office advised that it could make no inspection of the premises concerning seating capacity until the applicant had received BZA permission.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires compliance with Sub-section 7104.2 of the Zoning Regulations. The Board concludes that the applicant has met his burden of proof. Based on Findings Nos 9, 10, 13, and 14, the Board concludes that the proposed use is a neighborhood facility. The Board further concludes that as required under Sub-section 8207.2, the relief can be granted as in harmony with the general intent and purposes of the Zoning Regulations and that it will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The hours of operation of the facility shall not exceed from 6:00 A.M. to 12 midnight, seven days a week.
2. The maximum seating capacity shall be forty.

VOTE: 4-0 (Lindsley Williams, Connie Fortune and Charles R. Norris to Grant; Douglas J. Patton to Grant by Proxy; William F. McIntosh not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: OCT 26 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.